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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No.

JESS FREEMAN HAYES, *Petitioner,*

vs.

HOWARD HORNBUCKLE, SHERIFF OF SANTA CLARA COUNTY, CALIFORNIA, *Respondent.*

Petition for Writ of Certiorari to the Supreme Court of the State of California

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To the Honorable the Justices of the Supreme Court of the United States:

Jess Freeman Hayes prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of California entered in the Matter of the Application of I. B. Padway on behalf of Jess Freeman Hayes for a Writ of Habeas Corpus.

Opinion Below

The Supreme Court of the State of California rendered no written opinion.

Jurisdiction

The judgment of the Supreme Court of the State of California was entered on January 15, 1951 (R-4).

The jurisdiction of this Court is invoked under Title 28 U.S.C.A. Section 1257 (3).

In compliance with Rule 12 (1), third paragraph, the following is the procedural history of the matter in the State courts of California:

On November 28, 1950 Jess Freeman Hayes filed a petition for a Writ of Habeas Corpus in the Superior Court of the State of California in and for the County of Santa Clara. He stated that the respondent, Howard Hornbuckle, Sheriff of Santa Clara County, State of California, imprisoned and detained him in violation of Article IV, Section 2, Clause 2, of the Constitution of the United States. On November 28, 1950 the Honorable M. G. Del Mutolo, Judge of the Superior Court of the State of California in and for the County of Santa Clara, issued a Writ of Habeas Corpus commanding the Respondent to produce the Petitioner in court. On November 29, 1950 Judge William L. James of the same court discharged the Writ and ordered the Respondent to retain custody of the Petitioner (R-3).

On November 29, 1950 I. B. Padway, Esquire, in propria persona, applied for a Writ of Habeas Corpus on behalf of Jess Freeman Hayes in the District Court of Appeal, State of California, First Appellate District, Division 2. In the application it was set out that the imprisonment of Jess Freeman Hayes was contrary to the Constitution and Laws of the United States. A hearing was held on December 26, 1950. On December 26, 1950 the petition was denied (R-3).

On December 28, 1950 I. B. Padway, Esquire, in propia persona, filed an application for a Writ of Habeas Corpus on behalf of Jess Freeman Hayes in the Supreme Court of the State of California, Case No. Crim. 5193 (R-1-4). The applicant alleged that Jess Freeman Hayes was imprisoned, detained, confined and restrained in violation of the Constitution and Laws of the United States (R-2). The applicant further alleged that Section 1549.1 of the Penal Code of the State of California (Appendix p. 10) under which

the Petitioner is being extradited is unconstitutional as it violates the Fourteenth Amendment of the Constitution of the United States (R-2). On January 15, 1951 the petition for a Writ of Habeas Corpus was denied (R-4).

On January 22, 1951 an application for Stay of Mandate and Execution of Judgment and for Bail pending petition for a Writ of Certiorari to the Supreme Court of the United States was filed in the California Supreme Court (R. 5 & 6). The applicant stated that a petition to the Supreme Court of the United States for a Writ of Certiorari for a review of the Court's judgment was to be prosecuted. On February 8, 1951 the application was denied by order of Chief Justice Gibson, Justice Carter dissenting (R-7).

On February 12, 1951 a Motion for a Stay of Judgment of the Supreme Court of the State of California was filed in this Court Ex Parte Jess Freeman Hayes. The Motion stated that the detention and extradition of Jess Freeman Hayes is contrary to Article IV, Section 2, Clause 2, of the Constitution of the United States, that the detention and extradition is in violation of Title 18, U.S.C.A., Section 3182, and that Section 1549.1 of the Penal Code of the State of California, pursuant to which the Governor of California is extraditing the Petitioner to the State of Oklahoma, is unconstitutional as it violates Article IV, Section 2, Clause 2, and the Fourteenth Amendment of the Constitution of the United States and, in addition, is in conflict with Section 3182. On February 15, 1951 Mr. Justice Jackson of this Court ordered the "Stay granted pending action on petition for Writ by full Court."

Question Presented

Whether Section 1549.1 of the Penal Code of the State of California embodying the provisions of Section 6 of the Uniform Extradition Act violates Article IV, Section 2, Clause 2, of the Federal Constitution, the Fourteenth

amendment of the Federal Constitution, and conflicts with Title 18, U.S.C.A. Section 3182.

Statutes Involved

The pertinent constitutional and statutory provisions involved are printed in the Appendix, infra, pp. 9 and 10.

Statement

On November 1, 1946 the Petitioner, Jess Freeman Hayes, was divorced from Elsie Hayes by order of the Superior Court of the State of California in and for the County of Fresno. The decree granted custody of the minor children to Elsie Hayes. (R-18). She and the minor children moved to Oklahoma in 1947. (R. 17).

On October 11, 1950 Elsie Hayes filed an amended complaint in the Justice Court of the City of Drumright, Creek County, Okla. (R. 12)* She alleged that the Petitioner, Jess Freeman Hayes, abandoned and deserted his three minor children under the age of 15 years on or about February 1, 1948, and continuously after that date by intentionally and feloniously refusing to provide for them. She admitted that the Petitioner was not personally present in the State of Oklahoma during the time involved. (R. 12). However, she alleged he intentionally committed an act in California which resulted in a felonious violation of Title 21, Section 853 of the Oklahoma Statutes Annotated (Appendix, p. 10).

An application for the requisition of the Petitioner was executed on October 13, 1950 by G. B. Chuck Coryell, County Attorney, Creek County, State of Oklahoma. The application sets forth that the Petitioner, Jess Freeman Hayes, was not personally present within the State of Oklahoma during the period when he allegedly committed the offense. (R. 9). On October 20, 1950 Roy J. Turner, Governor of Oklahoma,

* The original complaint appears at page 15 of the *Record*.

executed a requisition, directed to the Governor of the State of California, requesting that Jess Freeman Hayes be apprehended and delivered to an officer of the State of Oklahoma. (R. 7-8A). On November 10, 1950 Earl Warren, Governor of the State of California, issued a warrant for the arrest of Jess Freeman Hayes. The Petitioner was arrested by the Respondent, Sheriff of the County of Santa Clara, State of California, and remains in his custody today.

The Petitioner has been a resident continuously of the State of California since 1941. (R. 2).

Specification of Errors to be Urged

The Supreme Court of the State of California erred:

1. In failing to hold that the imprisonment, detention, confinement, restraint and extradition of the Petitioner violated Article IV, Section 2, Clause 2, of the Constitution of the United States, the Fourteenth Amendment of the Constitution of the United States, and Title 18 U.S.C.A., Section 3182.

2. In refusing to issue a Writ of Habeas Corpus applied for on behalf of Jess Freeman Hayes, Petitioner.

Reasons for Granting the Writ

1. This is a case of first instance. It presents the question of whether or not the Uniform Extradition Act, Section 6, is constitutional under Article IV, Section 2, Clause 2, of the United States Constitution as implemented by Title 18, U.S.C.A., Section 3182 (Appendix, p. 9).

Article IV, Section 2, Clause 2, is the source of all authority for the extradition from one state to another of a fugitive from justice. *U. S. ex rel. Silver* v. *O'Brien, Sheriff*, 138 F. 2nd 217, (C.C.A.-7). It is not self executed and the Federal Constitution contains no express grant of legislative power to execute the provision. In *Roberts* v. *Reilly*, 116 U. S. 80, 29 L. Ed. 544, 6 S. Ct. 291, this Court sustained the validity of legislation enacted by Congress to

execute the provision. Until recently Title 18, U.S.C., 1940 Ed., §662 (R.S. §5278) controlled interstate extradition.

Following the revision of the U. S. Code interstate extradition has been governed by Title 18, U.S.C.A., §3182 (App. p. 9).

The state courts that have passed upon the question presented by this case have upheld the constitutionality of Section 6 of the Uniform Extradition Act. *Ex Parte Morgan,* 194 P. 2nd 800, 86 Cal. App. 2nd 217; *Stark* v. *Livermore,* 65 Atl. 2nd 625, 3 N. J. Super. 94.

The fundamental issue involves the definition of "a fugitive from justice." Basically, the problem is whether or not the alleged fugitive must have been physically present in the demanding state on or about the date that the alleged crime was committed. The Federal courts in interpreting Federal laws have required such physical presence. Section 6 of the Uniform Extradition Act does not require such physical presence as a condition precedent to interstate extradition. (Appendix, Infra, p. 10).

This Court in *Hyatt* v. *New York, ex rel. Corkran,* 188 U. S. 691, 47 L. Ed. 657, 23 S. Ct. 456, held that the constitutional provision and its implementing legislation applied only to persons who are actually present in the demanding state when they committed the act charged against them. Subsequently, in *Innes* v. *Tobin,* 240 U. S. 127, 60 L. Ed. 562, 46 S. Ct. 290, it held that the surrender of a person in one state for removal as a fugitive to another state was prohibited where it clearly appears that the person was not and could not have been a fugitive from the justice of the demanding state.

The lower Federal courts in interpreting old Section 662 required physical presence in the demanding state on or about the date the alleged offense was committed. *U. S. ex rel. Silver* v. *O'Brien, supra; Dougherty* v. *Hornsby, Chief of Police,* 151 F. 2nd 799, (C.C.A.-5); *U. S. ex rel. Miller* v. *Walsh,* 182 F. 2nd 264, (C.C.A.-7).

Thus, a conflict exists as to the conditions precedent to interstate extradition required by Federal courts under Federal law and the terms required by Section 6 of the Uniform Extradition Act as embodied in Section 1549.1 of the California Penal Code and upheld by the State Supreme Courts.

The case of *Morgan* v. *Horrall, Chief of Police,* 175 F. 2nd 404 (C.C.A.-9), involved the extradition of a person from California to Colorado under the provisions of Section 1549.1 of the California Penal Code. The alleged fugitive applied for Writs of Habeas Corpus in the State Courts of California. The applications were denied or the Writ discharged. The alleged fugitive then petitioned for a writ in the United States District Court for the Southern District of California, Central Division to prevent extradition. The Writ was discharged. This action was affirmed on appeal on the ground that the State Courts had properly interpreted the meaning and applicability of the statutes involved. The court further noted that the appellant made no attempt to secure a stay of execution of the judgment of the State court either from a Justice of the California Supreme Court or from a Justice of the Supreme Court of the United States. Such a stay, the court advised, should have been secured to allow for the obtaining of a Writ of Certiorari from the Supreme Court of the United States. Citing *Ex Parte Hawk,* 321 U. S. 114, 88 L. Ed. 572, 64 S. Ct. 448.

The procedure outlined in the *Morgan* case, supra, has been followed by the Petitioner in the case at bar.

In view of the conflict between the provisions of the Federal Extradition Laws and the Uniform Extradition Act, Section 6, this Court should grant a Writ of Certiorari to determine the constitutional question that has been raised.

2. The Petitioner has exhausted the remedies available in the courts of the State of California. A petition for a Writ of Certiorari to this Court is the proper means of

seeking a review of the judgment of the Supreme Court of the State of California. *Darr* v. *Burford,* 339 U. S. 200, 94 L. Ed. 761; *White* v. *Ragen,* 327 U. S. 760, 89 L. Ed. 1348, 65 S. Ct. 978. *Exparte Hawk,* supra.

In *Darr* v. *Burford,* supra, at page 216, this Court stated:

> "... we think a petition for certiorari should ... be made before an application may be filed in another Federal court by a state prisoner.... It is this Court which ordinarily should reverse state court judgments concerning local criminal administration. The opportunity to meet that constitutional responsibility should be afforded...."

The Petitioner is affording this Court an opportunity to determine the constitutionality of the Uniform Extradition Act, Section 6, by means of a Writ of Certiorari to the Supreme Court of the State of California. The Petitioner has not sought a Writ of Habeas Corpus from any Federal court.

Thus, the procedural requirements established by this Court in the cited cases have been strictly complied with. The Federal question involved has been presented to this Court at the proper time and in the proper manner.

Conclusion

For the foregoing reasons, it is respectfully requested that this petition for a Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

United States Constitution

Article IV, Section 2, Clause 2

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statute

Act of June 25, 1948, c. 645, 62 Stat. 822 (18 U.S.C.A. §3182)

Fugitives from State or Territory to State, District or Territory.

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no

such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

CALIFORNIA STATUTE

Section 1549.1 of the California Penal Code (Section 6 of the Uniform Extradition Act)

The Governor of this State may also surrender, on demand of the executive authority of any other State, any person in this State charged in such other State in the manner provided in section 1548.2 of this code with committing an act in this State, or in a third State, intentionally resulting in a crime in the State whose executive authority is making the demand. The provisions of this chapter, not otherwise inconsistent, shall apply to such cases, even though the accused was not in the demanding State at the time of the commission of the crime, and has not fled therefrom. Neither the demand, the oath, nor any proceedings under this chapter pursuant to this section need state or show that the accused has fled from justice from, or at the time of the commission of the crime was in the demanding or other State.

OKLAHOMA STATUTE

Laws 1915, Ch. 149, §1; Laws 1923, Ch. 78, §2, P. 144, (Title 21, Sec. 853, Oklahoma Statutes Annotated)

Desertion of wife or child under 15—Penalty:

Every person who shall without good cause abandon his wife in destitute or necessitous circumstances and neglect and refuse to maintain or provide for her, or who shall abandon his or her minor child or children under the age of 15 years and wilfully neglect or refuse to maintain or provide for such child or children, shall be deemed guilty of a felony and upon conviction thereof, shall be punished by imprisonment in the State penitentiary for any period of time not less than one year or more than 10 years.